

# State of California



## Fair Political Practices Commission

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Technical Assistance	• •	Administration	• •	Executive/Legal	• •	Enforcement	• •	Statements of Economic Interest
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March 26, 1985

Robert C. Lynn  
Office of the General Counsel  
Raytheon Company  
Electromagnetic Systems Division  
6380 Hollister Avenue  
Goleta, CA 93117-3197

Re: Your Request for Advice  
Our File No. A-85-064

Dear Mr. Lynn:

Thank you for your request for advice concerning the recent amendments to Government Code Section 84308 of the Political Reform Act of 1974.<sup>1/</sup> I have enclosed copies of relevant staff advice letters and a set of the recently amended Commission regulations in this area.

As you noted in your letter, certain agencies are expressly exempt from the coverage of Section 84308. Section 84308(a)(3) provides that an "agency" does not include "local governmental agencies whose members are directly elected by the voters." However, Section 84308 does apply to a person who is a member of an exempt agency if that person acts as a voting member of any nonexempt agency.<sup>2/</sup> Thus, for example, a member of a county board of supervisors is exempt vis-a-vis proceedings before the

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<sup>1/</sup> The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

<sup>2/</sup> When an exempt agency, such as a board of supervisors or city council sits in its entirety as the governing body of another agency, that second agency is also exempt. For example, if the board of supervisors appoints itself as the county redevelopment agency board, then the redevelopment agency will also be exempt from Section 84308.

Robert C. Lynn  
March 26, 1985  
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board of supervisors or a committee thereof. See 2 Cal. Adm. Code Section 18438.1. However, if that supervisor sits as a member of the board of a joint powers agency or, as the representative of the board of supervisors on a water district, he or she is not exempt vis-a-vis the proceedings of the joint powers agency or the water district.

If an official is covered by Section 84308 because he is a member of a nonexempt agency, he cannot accept or solicit contributions from persons who are parties or participants before that agency in the types of proceedings listed in Section 84308. The fact that the official may also be an official of an exempt agency (e.g., a member of the Board of Supervisors) does not change this result. The official cannot choose to accept or solicit contributions in his capacity as a supervisor rather than in his capacity as a member of a covered agency.

I hope that this discussion answered all of your concerns. If you have more specific questions or would like further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Diane Mautz Fishburn  
Staff Counsel  
Legal Division

DMF:plh  
Enclosures

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March 8, 1985

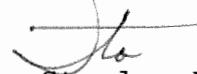
Barbara Milman  
General Counsel  
Fair Political Practices Commission  
1100 "K" Street Building  
P. O. Box 807  
Sacramento, CA 95804

Re: Letter from Robert C. Lynn

Dear Barbara:

Enclosed please find a letter from Robert C. Lynn of Raytheon dated March 4, 1985. Mr. Lynn is a good friend and colleague, and I would appreciate it if you could provide him with a prompt and thorough answer to his questions.

Yours very truly,



Stanley M. Roden

SMR:bg  
Enc.  
cc: Robert Lynn

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## Raytheon

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Office of the General Counsel

March 4, 1985  
1220:85-111

Mr. Stanley M. Roden  
Attorney at Law  
Hatch & Parent  
P.O. 720  
Santa Barbara, CA 93102

Subject: Political Reform Act

Dear Stan:

First of all congratulations on your appointment to the State Fair Political Practices Commission.

In your new status as a Commissioner, I do want to pose a question to you concerning application of Chapter 1681, as passed by the 1984 Regular Session of the legislature and signed into law September 30, 1984. I have attached a copy of Chapter for your reference.

My question concerns the definition of "officer" as it relates to "agency" for the application of Section 84308 (b) and (c) of the California Government Code. More specifically, an "officer" is ". . . any elected or appointed officer of an agency . . ." [Government Code § 84308 (a) (4)]. An "agency" does not include ". . . local governmental agencies whose members are directly elected by the voters . . . . However, (it does apply) to any person who is a member of an exempted agency but is acting as a voting member of another agency." [Government Code § 84308 (a) (3)] These definitions are critical to the application of paragraphs (b) and (c) of section 84308 in that both apply to an "officer of an agency."

To further explain my question, I would like to use a hypothetical example. If a member of the Board of Supervisors is also, as a result of his position, sitting as a member of an agency, (County Flood Control and Water Conservation District, for example), Sections (b) and (c) would appear to be applicable, based upon the above definitions. However, it seems anomalous that if this same person accepts, solicits or directs a

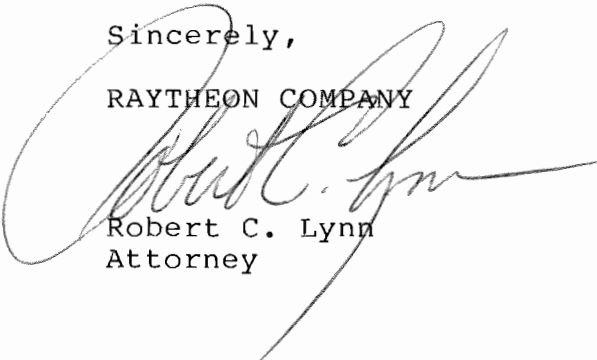
Mr. Stanley M. Roden  
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Page Two

contribution in his/her capacity as a member of the Board of Supervisors that he/she is not covered by this Section. Thus, by merely changing "hats," the Section is applicable or not applicable. This anomaly may not seem as strange at first blush as one may think, because the law does differentiate, for example, between the same person's status as that of an executor and as a beneficiary.

Thus, with this background, my question is--does the foregoing interpretation properly interpret this Government Code Section 84308? Sections (b) and (c) do not apply to a person who is directly elected by the voters and who accepts solicits or directs a contribution of Two Hundred Fifty Dollars (\$250.00) or more while in that status.

Sincerely,

RAYTHEON COMPANY



Robert C. Lynn  
Attorney

RCL:hlm

Enclosure: Chapter 1681

## CHAPTER 1681

**(Assembly Bill No. 2992)**

An act to amend Section 84308 of, and to add Section 83123 to, the Government Code, relating to the Political Reform Act, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

## LEGISLATIVE COUNSEL'S DIGEST

**AB 2992, M. Waters. Political Reform Act: campaign contributions.**

Under the Political Reform Act of 1974, an elected or appointed officer, or alternate, or candidate for office, is prohibited from accepting campaign contributions of \$250 or more, from persons who have applications for licenses, permits, and other similar documents pending before any quasi-judicial body of which the officer is a member.

This bill would define certain terms utilized in the Political Reform Act with respect to the prohibition regarding receiving these campaign contributions.

This bill would also delete the term "quasi-judicial body" and apply the provisions of the prohibition to all state and local government agencies, except the Legislature, the courts, city councils and boards of supervisors.

This bill would also require the Fair Political Practices Commission to establish a division of local enforcement and would appropriate the sum of \$657,437 from the General Fund to the commission for specified purposes.

The bill would take effect immediately as an urgency statute.

**Appropriation:** yes.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 83123 is added to the Government Code, to read:

**§ 83123.** The commission shall establish a division of local enforcement to administer, interpret, and enforce, in accordance with the findings, declarations, purposes, and provisions of this title, those provisions relating to local government agencies as defined in Section 82041.

**SEC. 2.** Section 84308 of the Government Code is amended to read:

**§ 84308.** (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does

not include the governmental ag  
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(4) "Officer" means a person appointed or elected to an office in an agency.

(5) "License, professional, trade and including all entities labor, or personal

(6) "Contributive  
eral, state, or local

(b) No officer or employee of the State shall receive more than one hundred fifty dollars for any service rendered to any participant, or to any other entitlee, after the date of the following the date of the death of the participant, and that the officer know of the interest, as that term is used in Chapter 7. This prohibition shall not apply to any solicits, or directs the officer, or on behalf of the officer, to receive any such payment.

(c) Prior to rendering other entitlement for received a contribution of one hundred fifty dollars, disclose that fact on the form, make, participate in the position to influence the other entitlement for knowingly received a contribution of one or more within the period of any participant, or his or her spouse, has reason to know that the term is described in Section 87100) of the California

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(d) A party to a proceeding has an entitlement for use share in an amount of two percent of the net proceeds preceding 12 months before the proceeding. No party, or his or her agent, in the proceeding may receive more than \$250 or more, to any party, in the proceeding, in the 12 months following the proceeding. When a proceeding involving a

not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of two hundred fifty dollars (\$250) or more, from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding; provided, however, that the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of two hundred fifty dollars (\$250) or more from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent; provided, however, that the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of two hundred fifty dollars (\$250) or more made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of two hundred fifty dollars (\$250) or more, to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before

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an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under the Political Reform Act of 1974 shall not be so reported.

SEC. 2.5. The Legislature finds and declares that the provisions of this act further the purpose of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 3. There is hereby appropriated the sum of six hundred fifty-seven thousand four hundred thirty-seven dollars (\$657,437) from the General Fund to the Fair Political Practices Commission.

The Fair Political Practices Commission shall maintain enforcement of the Political Reform Act of 1974 relating to local government agencies at a workload level equal to the average workload of the 1981, 1982, and 1983 calendar years with the funds annually appropriated to the commission pursuant to Section 83122 of the Government Code. The funds appropriated by this act shall be expended by the commission to establish the division of local enforcement and for additional administration, interpretation, and enforcement of those provisions relating to local government agencies.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that the provisions of the Political Reform Act are complied with by all state and local candidates in the next general election.

EXPLANATORY NOTES CH 1681:

Gov C § 84308. Substituted the section for the former section.

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